

GOVERNMENT OF ANDHRA PRADESH
A B S T R A C T

Industries and Commerce Department – Sick Industries - M/s Andhra Pradesh Scooters Limited – Payment of dues to State Bank of Hyderabad & Indian Overseas Bank – Simple Interest at the rate of 12% per annum of Rs.155.67 Lakhs to State Bank of Hyderabad and Rs.133.42 Lakhs to Indian Overseas Bank as per the orders of Supreme Court of India dated 1.12.2008 in Special Leave Petition No.19947/2003- Orders – Issued.

INDUSTRIES AND COMMERCE (IFR-1) DEPARTMENT

G.O.Ms.No. 59

Date:19.02.2009

Read the following:

- 1.Board for Industrial & Financial Reconstruction opinion dt.1.10.1993.
- 2.Presiding Officer, DRT, Bangalore order dated 29.1.1998 in OA No.443/96 filed by State Bank Hyderabad & Indian Overseas Bank.
- 3.Orders dated 9.12.2002 of Presiding Officer, Debt Recovery Tribunal, Bangalore in MA No.55/02 filed by SBH & IOB against the orders dated 29.1.1998 of DRT, Bangalore in O.A.No.443/96.
- 4.Order dt.21.8.2003 of Chairperson,DRT Chennai in IN No.28/2003.
- 5.Govt.Lr.No.9567/IFR-1/02, dated 08.09.2003.
- 6.Orders dated 23.3.2007 of the S.C. of India in SLP(Civil) No.19947/2003 filed against the orders of DRT, Chennai, in IN No.28/2003 in OA.No.443/96.
- 7.G.O.Ms.No.92, Inds.& Com.(IFR-1) Deptt.dated 25.4.2007.
- 8.Supreme Court Orders dated 1.8.2008 in SLP (Civil) No.19947/2003.
- 9.Supreme Court orders dated 3.11.2008 in SLP No.19947/2003.
- 10.Supreme Court orders dated 1.12.2008 in SLP (Civil)No.19947/2003.

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ORDER:

M/s.Andhra Pradesh Scooters Limited incurred huge lossess and reported to Board for Industrial Financial Reconstruction. The BIFR has sent their opinion to A.P. High Court on 1.10.1993.

Based on the opinion of the BIFR, the Hon'ble High Court passed orders for winding up of M/s.A.P.Scooters Limited and appointed the Official Liquidator for taking necessary action as per the provisions of Companies Act, 1956. Before the opinion conveyed by the BIFR, the Industrial Development Bank of India filed a Suit in the High Court of Mumbai for recovery of their dues from M/s. A.P.Scooters Limited amounting to Rs.3.00 crores. The High Court of Mumbai appointed the Court Receiver for taking possession of the movable and immovable properties of the Company. On 18.8.1994 the Court Receiver seized the Company.

The State Bank of Hyderabad and Indian Overseas Bank have filed O.A.No.443/96 before the DRT, Bangalore for recovery of their due amounting Rs.12,23.81,802.43 payable by A.P.Scooters Limited. The DRT, Bangalore by its order dated 14-8-1998 decreed for the said amount. Further, the State Bank Hyderabad and Indian Overseas Bank have filed MA No. 55/2002 in OA No. 443/96 for correction of clerical errors by incorporating the following clause "that 2nd Defendant (Government of A.P) is liable to pay balance found to be due after sale proceeds of hypothecated goods are credited to loan account.

In the reference 3rd read above, M.A.No.55/2002 has been dismissed on 9.12.2002 on the ground that the error was not a clerical error and that the author of the order dated 29.1.1998 intends to exonerate Defendant No.2 (Govt. of AP) from liability though it is quite possible to say that such intendment was based on

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an erroneous overlooking of the true facts. Aggrieved by above orders, the State Bank of Hyderabad and Indian Overseas Bank have filed an appeal in the Debt Recovery Appellate Tribunal, Chennai with a prayer to set aside the order of the Hon'ble Presiding Officer, Debt Recovery Tribunal, Bangalore dt.29.1.1998 in O.A.No.443/96 declaring the 1st Defendant alone to be liable and declare that the Defendants 1 & 2 are liable jointly and severally being the principal debtor and the guarantor and grant a decree against the Defendant No.2 for the balance of the suit amount that remains outstanding after adjusting the sale proceeds of the hypothecated goods and for the costs of this appeal.

The Government have filed Written Preliminary Objections in regard to delay condonation filed by State Bank of Hyderabad. The Government have averred that the Appellants / Applicant did not specify the date of applying Certified Copy of the Judgment in O.A.No.443/96 dt.29.1.1998 nor any such copy of the same is filed before this Appellate Tribunal to substantiate their stand. Therefore the plea of the Appellants stand that they are not aware of the pronouncement of the Judgment passed by the DRT, Bangalore in O.A.No.443/96, dt. 29.1.1998 is misconceived and not maintainable. The Government have prayed the DRAT, Chennai to dismiss the Appeal on the ground of limitation.

The Government Pleader for Industries, High Court of Andhra Pradesh attended before the DRAT, Chennai on 21.8.2003 and argued the case. After hearing the arguments, the Learned Judge allowed the I.A and condoned the delay petition filed by the State Bank of Hyderabad. The main appeals are posted for hearing on 17.9.2003. But Government Pleader for Industries and Commerce felt that Government of Andhra Pradesh has to file an SLP before the Supreme Court against the delay condonation petition since the Learned Judge condoned the delay of 1775 days merely on the ground that no order copy is dispatched to the Appellant Bank by the DRT, Bangalore. Though he submitted that the appellant ought to have filed certified copy of the judgment as per Regulation 57 of DRT Regulation of Practice, 1996, the Learned Judge observed that it was applied on 30.1.2003 and therefore the appeal is within time.

The Government have filed an Special Leave Petition in the Hon'ble Supreme Court of India against the orders dated 21.08.2003 of DRAT, Chennai in allowing the delay condonation petition filed by the State Bank of Hyderabad in I.N.No.28/2003 in O.A.No.443/96.

The Hon'ble Supreme Court has passed orders in Special Leave Petition (Civil) No.19947/2003 as follows:

“Without expressing any opinion on the merit of the case, we are of the view that in a case of this nature where the Government of A.P. is the petitioner and the State Bank of Hyderabad is the respondent, the parties should be able to reach an amicable settlement and for this purpose, we had permitted the parties to seek instructions.

We are informed that the Government of A.P. has not responded to any of the communications of its Counsel and therefore, he is not in a position to make a statement before this Court.

Let a copy of this order be communicated to the Chief Secretary of Government of A.P., who shall nominate an officer not below the rank of Secretary to the Government to affirm an affidavit before this Court whether the State Government is interested in an amicable settlement of the dispute and is willing to make a proposal for settlement”.

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In the reference 7th read above, the Government have issued orders nominating the Secretary to Government, Industries & Commerce Department to affirm an affidavit before the Supreme Court of India stating that the State Government is interested in having an amicable settlement and the same was done. The Supreme Court of India in the reference 8th read above have passed the following orders:-

Learned counsel for the parties submit that they are making efforts for amicable settlement in the matter. In the facts and circumstances of this case, we request the Finance Secretary of the Government of Andhra Pradesh and the Chief General Manager of the State Bank of Hyderabad have a joint meeting and try to sort out the outstanding issue amicably. The Finance Secretary, Government of Andhra Pradesh and the Chief General Manager, State Bank of Hyderabad shall submit a Joint Report to this Court within eight weeks from the date of the receipt of this order.

In the reference 9th read above, the Supreme Court of India has passed again the following orders:-

“After hearing, the Hon’ble Court has asked both the counsels why the Finance Secretary and Chief General Manger has not filed the joint report in compliance of order dated 1.8.2008. For this purpose, the Hon’ble Court was pleased to adjourn the matter for four weeks. It is therefore, requested to send a joint report stating that whether an amicable settlement is possible or not, in this matter”.

A meeting has been convened on 24.11.2008 in the Chambers of Principal Secretary to Govt., Finance Department with all the concerned and prepared a joint report agreed for payment of Simple Interest at the rate of 12% from 28-10-94 to State Bank of Hyderabad on the amount of Rs.91.57 Lakhs and 12% simple interest on the amount of Rs.78,48,503.10 from 28-10-94. to Indian Overseas Bank respetively till the date of payment. Accordingly an affidavit has been filed in the Supreme Court of India.

In the reference 10th read above, the Supreme Court of India has passed the following order:

“The guarantor, Government of Andhra Pradesh shall pay simple interest at 12% from 28.10.1994 to State Bank of Hyderabad on the amount of Rs.91,57,074.10 Ps and 12% simple interest on the amount of Rs.78,48,503.10 from 28.10.1994 to Indian Overseas Bank respectively, till date of payment. No amount other than interest as agreed above shall be payable by the Guarantor. The payment by the guarantor shall be treated as full and final satisfaction of the guarantor’s liability and the guarantor would pay the agreed amount within two months from the date of orders passed by the Hon’ble Supreme Court on this joint report. The settlement with the guarantor will in no way be affected by the recoveries disbursed / to be disbursed to the Banks by Official Liquidator.

The above arrangement is only between the banks and the guarantor. The Banks are at liberty to recover the balance amount of principal and interest form the borrower M/s. A.P.Scooters Ltd. through Official Liquidator as per the Recovery Certificate being the amount due from the Borrower and to accept the available amount distributed / apportioned between secured creditors proportionately by Official Liquidator.

In view of the above settlement, the parties herein jointly pray that this report be taken on record and the Special Leave Petition be disposed of in the above terms.” With above orders, the appeal has been disposed off”.

After careful examination, the Government is hereby ordered to pay Rs.155.67 Lakhs to State Bank of Hyderabad and Rs.133.42 Lakhs to Indian Overseas Bank totaling to Rs.289.09 Lakhs (Rupees Two Crores Eighty Nine

Lakhs and Nine thousand only) which is arrived @ 12% Simple Interest per annum towards settlement of interest dues to above said Bankers as per orders of Supreme Court of India dated 1.12.2008. The obligation on part of Guarantor ends with this payment.

The expenditure shall be met by way of advance from Contingency Fund, as the amount is settled as per the direction of the Hon'ble Supreme Court of India dated 1.12.2008. The expenditure shall be debited to the following Head of Account:-

2875 – other Industries,
60 – other Industries,
MH -190 Assistance to Public Sector and other Undertakings
SH - Reimbursement of dues of A.P.Scooters.
310 – Grant - in - Aid,
312 – Other Grant – in - Aid (charged) (to be opened)

The Commissioner of Industries, Andhra Pradesh, Hyderabad is hereby authorized to draw and disburse the amount of Rs. Rs.155.67 Lakhs to State Bank Hyderabad and Rs.133.42 Lakhs to Indian Overseas Bank totaling to Rs.289.09 Lakhs (Rupees Two Crores Eighty Nine Lakhs and Nine thousand only)and report compliance.

Orders sanctioning advance from the Contingency Fund shall be issued separately by Finance (B.G) Department. The Industries & Commerce Department in requested to send proposal to Finance (B.G) Department duly enclosing the administrative sanction for release of Contingency Fund.

The Commissioner of Industries, Hyderabad is requested to obtain supplementary grant at the appropriate time for repayment of advance to the Contingency Fund.

This order issues with the concurrence of Finance (Expdr.-Inds.& Com.) Department vide their U.O.No.3252/48, Exp.Inds.&Com./2009, Date 16.02.2009)

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

**Y.SRILAKSHMI
SECRETARY TO GOVERNMENT**

To
The Commissioner of Industries,
Andhra Pradesh, Chirag Ali Line, Abids, Hyderabad.
The Chief General Manager, State Bank Hyderabad,
Gunfoundary, Hyd.
The Assistant General Manager,
Indian Overseas Bank,
Mahatma Gandhi Raod, Secunderabad.
The Accountant General,
Andhra Pradesh, Hyderabad.
Cto Copy to: The Director of Treasuries and Accounts,
Andhra Pradesh, Hyderabad.
Copy to: Finance (Expenditure (Inds.&Com.) / (B G) Department.
Copy to: SF / SC.

//FORWARDED BY ORDER//

SECTION OFFICER.